



# RETIREMENT FUNDS BILL

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The Retirement Funds Bill, 2022 (the “Bill”) seeks to repeal and re-enact with amendments, the Retirement Funds Act [Cap 27:03] (the “Act”). The purpose of the Bill is to expand and strengthen the Non-Bank Financial Institutions Regulatory Authority’s (“NBFIRA”) oversight authority, to improve governance, safety, soundness, fairness, efficiency, orderliness, and sustainability of retirement funds. The notable changes are as follows:

## GOVERNANCE OF FUND ADMINISTRATORS

The Bill establishes a structure for the governance of fund administrators under section 25 of the Bill, which structure was lacking in the Act.

In addition to the duties of a fund administrator to maintain the books of accounts and other records of a fund, the Bill provides that a person who produces or gives or causes or knowingly allows to be produced or given, financial statements, reports, or any other document that the person knows or ought to have reasonably known to be false in a material respect is liable to a civil penalty not exceeding P100, 000.

## **DUTY TO ESTABLISH MEASURES TO PREVENT MONEY LAUNDERING, FINANCING OF TERRORISM AND FINANCIAL CRIME**

According to the Bill, a retirement fund and any person providing services to a retirement fund is required to establish procedures to prevent a financial crime or money laundering and financing of terrorism in accordance with the relevant legislation. This is not provided for in the Act.

The Bill also grants NBFIRA with the authority to make rules to further enhance anti-money laundering and combating of financing of terrorism measures.

A retirement fund and any authorised person is required to report immediately to NBFIRA, any evidence of criminal activity either in Botswana or elsewhere which the retirement fund or authorised person suspects is associated with the use of its institution or services.

This is a welcome development particularly as Botswana has recently been removed from the Financial Action Task Force's grey list P100,000.

## **DEDUCTIONS FROM MEMBER'S BENEFITS**

The Bill introduces some changes in respect of deductions from a benefit payable to a member or his or her dependents or nominees in the following manner:

- The Bill makes specific provision for deductions for any amount due on the repayment of a mortgage loan as a last resort where a member is retiring as well as where a person's membership has been deferred. The Act only has provisions dealing with loans generally. This new provision on mortgage loans also incorporates conditions upon which accrued benefits will be disbursed to pay off a mortgage loan.
- According to the Bill, a deduction of up to 50% of the total benefits at the time of the deduction, may be made for the medical treatment of a terminal ailment or a chronic disease categorised as such by an independent medical practitioner appointed by the fund with the consent of the member. This is also a new and welcome development in light of the economic landscape in Botswana, particularly where one no longer has access to medical aid resources.

## **APPOINTMENT OF A STATUTORY MANAGER AND CURATOR TRUSTEE**

The Bill proposes to make additions to the Act by providing for the appointment of a statutory manager and curator trustee in respect of a fund administrator and fund respectively. The statutory manager is appointed through an application to the High Court. A curator trustee is appointed by NBFIRA. The Act only provides for the appointment of liquidators.

## GENERAL PROHIBITIONS AND PENALTIES

According to the Bill, the use of the name/description “retirement fund”, “retirement annuity fund”, “pension fund”, or “provident fund” without NBFIRA’s approval attracts a maximum fine of P 250 000. Further, a fund that conducts a business contrary to the requirements of the Act/Bill will also be liable to a maximum fine of BWP 250,000.00. The current maximum fine for both contraventions of the Act as well as illegal use of the aforesaid descriptions, in terms of the Act is P 30,000.00.

We trust this newsflash has been of assistance in addressing any questions one might have with respect to the proposed changes contained in the Retirement Funds Bill. For any further information, please feel free to contact **Nancy Mopipi** at [nancy@bookbinderlaw.co.bw](mailto:nancy@bookbinderlaw.co.bw) and **Olebile Daphney Muzila** at [olebile@bookbinderlaw.co.bw](mailto:olebile@bookbinderlaw.co.bw) or call +267 391 2397.